

Copyright and Related Rights Law

Dr. Rohan Cherian Thomas

Faculty of Law

NALSAR University of Law, Hyderabad

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LECTURE – 42

Term Part II

Welcome back to this course on copyright and related rights law. In the previous session, we had touched on the term of protection in which we had seen that an author's life plus a period of 60 years is the term that would apply for a literary, dramatic, musical, or artistic work. Which has been published within the lifetime of the author. We had also seen that there is a distinction, with respect to the calculation of a term in case the author is unidentifiable. The life plus 60 term would apply, if the author is identifiable, and in the case of anonymous and pseudonymous works where they are not identifiable. It is concerned with the publication of the work and 60 years counted from the beginning of the next calendar year.

In this session, we are going to further our understanding of the term of protection. But before we move ahead with certain other terms, Let us ask ourselves a basic foundational query that all of us already know the answer to, which is: does copyright subsist in an unpublished work? All of you are surely saying "yes." What this will also mean is that, because copyright is subsisting in a work that is unpublished, Any violation of copyright, even if it is unpublished, would amount to an infringement, and the author can take action against such an infringing action. But if copyright can subsist in an unpublished work against which legal action can be taken if there is an infringing action, then what is the relevance of publication? The publication we had understood is defined under section 3 of the Copyright Act, which states that the issuance of copies or communication of the work to the public will amount to publication.

In other terms, the work, when it is provided to the public, when it goes out of the hands of the author to the public, is considered to be publication. The relevance of publication is with respect to the calculation of the term of protection. This is important. Publication is not something that is connected to the subsistence of copyright. Please understand that copyright is subsisting in an unpublished work.

And because the term of protection is connected to publication, the only way we can understand the relevance of publication is that, with respect to the subsistence of copyright, publication is an irrelevant consideration. Publication is rather relevant for the calculation of the term of protection. So we can say that just like registration, which is optional, which has no relevance with respect to the consideration of whether copyright can subsist in a work; similarly, the case is with publications. Let us now look at another term of protection provided in the Indian Copyright Act. This particular term of protection is connected to posthumous works.

What does the term "posthumous" mean? You can see that posthumous means occurring, awarded, or appearing after the death of the originator. What are we saying here? We are saying that this is a work that will be published after the author's death, which means what? That the author had created the work, and before it was published, he passed away. And therefore, the term of protection will have to be calculated on the date of publication, which is falling outside of the lifetime of the author. I am sure you are able to make a clear distinction between section 22, which we had discussed in the earlier session, which talks about the term of protection with respect to the lifetime of the author as compared to section 22, which discusses the term of protection after the death of the author. Let us take a look at what Section 24 is saying.

I will read this provision. In the case of a literary, dramatic, or musical work, or an engraving in which copyright subsists at the date of the author's death, in the case of any such work of joint authorship at or immediately before the date of the death of the author who dies last, but which, or any adaptation of which, has not been published before that date, copyright shall subsist until 60 years from the beginning of the next calendar year, following the year in which the work is first published, or where an adaptation of the work is published, in any earlier year from the beginning of the calendar year next following that year. It then says in clause 2, for the purposes of this section, A literary, dramatic or musical work or an adaptation of any such work shall be deemed to have been published, If it has been performed in public or if any sound recordings made in respect of the work have been sold to the public or have been offered for sale to the public. We are seeing here that the term of protection is connected to publication in the same way the term of protection is connected to publication in the earlier provisions that we discussed as well. But you can also notice the distinction between the term of protection, publication, and subsistence of copyright.

Because section 24 is very clear when it says that copyright is subsisting in the work at the date of the author's death. Publication has occurred later. So the effective term of protection would be a period of 60 years, which is calculated from the beginning of the next calendar year from the date on which the work is published. It is also taking into account any such publication that might happen with respect to this work, where it occurs

through an adaptation. This is a term that we have yet to discuss in a lot of detail, but just to give us a basic understanding, an adaptation refers to a derivative work.

It is derived from the principal work and therefore will carry a substantial portion of the principal work. Where such a derivative or where such a sound recording that incorporates such a work has been published, it would be considered to start from that particular publication. Let us consider an illustration. Say X is the author of a literary work. The literary work came into existence in the year 2025.

X passed away in the year 2030. X's son Y publishes the literary work on the 23rd of July 2046. Are you able to calculate the term now? I am sure all of you must have been able to say that the term of protection will be from 1 January 2047 to 1 January 2107. Why is this? Because we are considering 60 years to be counted from the beginning of the calendar year following the date on which the work was published, which is on 23rd July 2046. Therefore, these 60 years will be between 2047 and 2107.

To clear any confusion that might exist in anybody's mind. This period between 2025 and 2047, the work is not under copyright protection. It is under copyright protection because copyright protection is not subject to publication. It is only the term that we are considering with respect to publication, and therefore there is no question of there not being any copyright subsistence prior to 2047. I hope this is crystal clear to all of us.

Let us now look at another term for protection. This is with respect to cinematographic films. Section 26 states that in the case of a cinematograph film, copyright shall subsist until 60 years from the beginning of the calendar year following the year in which the film is published. So we are talking about the film. We understand that the film is separate from its underlying components.

So where the underlying component is a literary work or a musical work, we have already discussed the provision of the term of protection that will apply to those works. With respect to cinematograph film, say the film is published on the 23rd of March 2025. Are you able to calculate the term of protection? I am sure you are all now able to calculate this term, which will be a period of 60 years from the date of publication. So, between 2026 and 2086. But let us also consider what the term of an underlying work, which is a constituent work of the composite cinematograph work, such as a script, would be.

I'm sure you are all able to say that the author of the script is the author of a dramatic work. The author will then enjoy where the work is published during his lifetime, which is his life plus a period of 60 years. But doesn't this mean that the scriptwriter has a longer term of copyright protection than the film does? Isn't it possible that a film published during the lifetime of the scriptwriter will have its copyright term expire before the copyright term of the scriptwriter in the dramatic work expires? Is that going to be a problem? What do I mean? Since copyright is subsisting with respect to the script, is it

possible that after the expiry of copyright in that film, the exhibition of that film, which should now otherwise be possible, requires no authorization from the film owner? Is that something that can be restricted by the constituent work author? This issue, which may possibly arise, has been remedied within a provision of section 52 of the Indian Copyright Act. Section 52 is an exception provision; it is something that we will be dealing with in much more detail in the following sessions. But just so that we understand, and because this is relevant to the question we are looking to answer.

Section 52 provides for certain considerations under which infringement of copyright does not occur. One such consideration is that, in relation to a literary, dramatic, artistic, or musical work recorded or reproduced in any cinematograph film, the exhibition of such a film occurs after the expiration of the term of copyright therein. Therefore, once the copyright in the film expires, the exhibition of such a film is not something that can be restricted, say, for example, by the scriptwriter. Let us look at yet another term of protection, which is provided for sound recordings. You will see that this provision reads very similarly to the provisions of cinematograph films.

And therefore, just like cinematograph films, sound recordings will have 60 years of protection post-publication. Still another kind of term of protection is attributed to government public undertaking works in which they are the first owners with respect to international organizations, which is again a period of 60 years from publication. Having seen the term of protection that is connected to works, let us now understand how the term of protection will be present with respect to performances. Under Section 38, Clause 2, it is stated that the performer's right shall subsist for 50 years from the beginning of the calendar year next following the year in which the performance is made. How is this provision different from the provisions we have seen for authors? You will note that the term protection is connected to the making of the performance and not the publication of the performance.

And this is an important understanding, as you will see when you take a look at this image. You will recall that we have seen this image before. We had seen it in the context of an important question that we answered. That a performance, in order to be considered for performer rights under the Copyright Act, does not have to be made in front of an audience. In other words, it need not be published in order for it to be considered a performance.

So singing in a studio is a performance, but this is not published. What does that mean? Even without any consideration of publication, the term of protection begins from the moment the performance is made. So the 50 years that will be counted will be counted from the date of the performance. This is an important understanding. We will see that there is a sense of distinction when we consider the term "protection" with respect to broadcasts.

As section 37, clause 2 states: The broadcast reproduction right shall subsist for 25 years from the beginning of the calendar year next following the year in which the broadcast is made. In terms of its language, you will see that this provision is very similar to the provision that we had seen regarding the term of protection for performers' rights. In terms of the provision with respect to the author's term of protection in their works, we have seen that that is also different. But when we consider what exactly broadcast is, Broadcast is communication to the public, and therefore publication is a synonymous consideration for broadcast. Therefore, when we say that a broadcast is made, it in effect means that the broadcast is published.

And therefore, the period that we are considering, even though we are saying that the period is to be counted from the beginning of the next calendar year, Following the year in which the broadcast is made, we are effectively saying that this is a term that is based on publication. So, to summarize our understanding, when we look at the term of protection from the context of publication, We are saying that a work has copyright protection even if it is not published, and publication is relevant for the calculation of the term of protection. A performance also need not be published, but performers' rights will subsist the moment it is made. But the calculation of the term is not connected to the publication. With respect to broadcasting, because broadcasting and publication are effectively the same, the term of protection is connected to publication.

Let us, in wrapping up this session, do this quick exercise. X is a composer. X made the composition on 23rd August 2025. X published the composition on 12th September 2030. When does copyright subsist, and when does the term begin? Are you able to solve this simple exercise? I am sure you are all able to say that copyright has subsisted in the composition since 23rd August 2025 and the term will begin on 1st January 2031.

With that, hopefully, we have all clearly understood the term of protection and its calculation. In the next session, we are going to consider what the public domain is and how the relinquishment of a work can happen. In the next session, we will see what the public domain is and how the relinquishment of copyright can happen. Thank you for joining me.

See you all in the next session. Thank you.